

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MELVIN GRAYER # 406020

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:17CV00316-LG-RHW

ZACHERY COUEY, OFFICER, ET AL.

DEFENDANTS

**MOTION OF ZACHERY COUEY TO ASSERT QUALIFIED
IMMUNITY AND TO DISMISS PURSUANT TO
FED. R. CIV. P. 12 OR FED. R. CIV. P. 56 AND FOR OTHER RELIEF**

COMES NOW Zachery Couey, by and through undersigned counsel, and without waiving any objection, response, immunity, or defense he may have to the “Complaint” and all amended or supplemented versions thereof, be they affirmative or otherwise, and herein submits this his “Motion to Assert Qualified Immunity and to Dismiss Pursuant to FED. R. CIV. P. 12 Or FED. R. CIV. P. 56 and for Other Relief” and submits that he is entitled to full dismissal from this cause, and in support thereof would show as follows, to-wit:

I.

Plaintiff, Melvin Grayer (“Plaintiff”) filed a “Complaint” [Doc. 1] with this Honorable Court on November 3, 2017. In this “Complaint,” Plaintiff identified various entities and individuals as “Defendants,” including the Officer Zackery Couey, “Doctor Colter,” “Capt. Lege,” “Sheriff Troy Peterson,” and “Jane and John Does.” See Exhibit “A” (attached hereto), p. 1. Plaintiff alleges that Officer Couey was a law enforcement officer who effected his arrest on May 25, 2017, while he was inside a building that he did not own or have proper authorization or

permission to enter. He contends to be suing Officer Couey in his individual capacity only and alleges that this Officer was “operating under color of state laws.” See Attachment “B” to Pl.’s Compl. [Doc. 1-2], p. 2.

II.

In his “Complaint,” Plaintiff alleges that Officer Couey “violated his 8th and 14th Amendment Constitutional Rights by excessive force.” See Exhibit “A,” p. 5 of 5. He claims he was subsequently handcuffed by police (as part of his arrest on scene) and purportedly sustained some sort of injury while he was being picked up off the ground by his handcuffs. See Attachment “A” to Pl.’s Compl. [Doc. 1-1], p. 1 of 3. He alleges that Officer Couey “did not call a medic” in response to Plaintiff’s subject complaint about his chest area hurting after being lifted off the ground by use of the handcuffs. See id. Plaintiff also alleges that after he was arrested, he was placed in a police patrol vehicle and that the only position he could “sit in was on top of the cuffs that was around (sic) [his] wrists.” See id. He vacuously alleges that his 8th Amendment rights were “clearly violated from a result of [his] race and color.” See id. Plaintiff was later transported to the Harrison County Adult Detention Center (“County Jail”). It appears Plaintiff is seeking to pursue a claim under 42 U.S.C. § 1983 against Officer Couey for alleged violations of the 8th and 14th Amendments to the United States Constitution. See id.

III.

On December 27, 2017, service of process was effected on Officer Couey. As evidenced by the documents submitted by Plaintiff in this proceeding, including, the “Complaint” [Doc. 1], Plaintiff has failed to assert a proper claim for relief against Officer Couey, who is a law enforcement official entitled to qualified immunity. Plaintiff’s claims against this municipal official are further without any merit and do not rise to the necessary level to overcome this official’s entitlement to qualified immunity (let alone substantiate a proper claim for relief).

Stated differently, Plaintiff cannot demonstrate the absence or inapplicability of the qualified immunity defense. Specifically, there is nothing to show that this official violated a clearly established constitutional right and that the official's conduct was objectively unreasonable under established law. As a result, Plaintiff's purported claims against Officer Couey must be dismissed pursuant to FED. R. CIV. P. 12 or FED. R. CIV. P. 56.

IV.

In addition, or in the alternative, the criminal charge for which Plaintiff was arrested has since been the subject of an indictment and is now pending as a criminal proceeding in the Circuit Court of Harrison County, First Judicial District, Mississippi. The movant herein states that the instant proceedings should be stayed pending a final resolution in this state court criminal proceeding.

V.

In support of this Motion, Officer Couey has attached the following:

EXHIBIT "A": Plaintiff's "Complaint" [Doc. 1] with its Attachment "A" and Attachment "B."

WHEREFORE, Zachery Couey, one of the Defendants, respectfully requests that this Honorable Court issue an Order granting his Motion to Assert Qualified Immunity and to Dismiss Pursuant to FED. R. CIV. P. 12 Or FED. R. CIV. P. 56 and for Other Relief in its entirety and fully dismissing this cause against him with prejudice as well as awarding the movant herein with all relief, equitable or otherwise, to which this Honorable Court finds he may be entitled.

RESPECTFULLY SUBMITTED, this the 16th day of January, 2018.

ZACHERY COUEY, DEFENDANT

By: s/ Jeffrey S. Bruni, Esq.

JEFFREY S. BRUNI, ESQ.

Attorney for Zachery Couey

MS Bar License No. 9573

CERTIFICATE OF SERVICE

I, Jeffrey S. Bruni, Attorney for Zachery Couey, do hereby certify that on this date I have had electronically filed the above and foregoing document with attached Exhibits with the Clerk of the Court using the ECF system, which should send notification of such filing to all counsel of record in this proceeding, and that I have this day had sent via First Class United States Mail, postage prepaid, a true and correct copy of the above and foregoing document with attached Exhibits to the Plaintiff, Melvin Grayer (#406020), Harrison County Detention Center, 10451 Larkin Smith Drive, Gulfport, Mississippi 39503.

This the 16th day of January, 2018.

s/ Jeffrey S. Bruni, Esq. _____.
JEFFREY S. BRUNI

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